

REMARKS

The Examiner rejected claims 1, 2, 3, 8-20 and 23-28 under 35 U.S.C. § 112, second paragraph as being indefinite. Specifically, the Examiner notes that claim 1 recites "a system", while claiming limitations such as, "(b) Play an audible message . . ." The Examiner claims that it is unclear whether the applicants are claiming a system or a method. The applicants respectfully refer the Examiner to the limitation within claim 1 that recites, "software operative on said processor to:" and is followed by four specific operative limitations on the software on the processor. The claim is specifically claiming a system, the software as an operative part of the system, and the software being provided in a form and nature that causes the system to act according to the four enumerated sub-limitations. Accordingly, applicants are claiming a system within claims 1, 2, 3, 8-20 and 23-28, in a manner that is definite to the extent that they particularly point out and distinctly claim the subject matter regarded as the invention.

The Examiner rejected claims 1, 2, 3, 8, 9, 19, 20, 25 and 26 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Publication No. 20030086541 to Brown, et al. Applicants respectfully disagree. Anticipation under 35 U.S.C. § 102 focuses on the questions of whether or not a claim reads on the product or process disclosed by a prior art reference, not what the reference broadly "teaches." Kalman v. Kimberly-Clarke Corp., 713 F.2d 760 (Fed. Cir. 1983). "For a prior art reference to anticipate in terms of 35 U.S.C. § 102, every element of the claimed function must be identically shown in a single reference." Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675 (Fed. Cir. 1988); Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference). Brown, et al. fails to teach each and every element as set forth in the subject claims.

The Examiner states that Brown, et al. disclose a system that presents an audible message that requests that a callee on the line terminate the call. Nowhere within paragraphs 0002, 0005 or 0033, as cited by the Examiner, do Brown, et al. teach or otherwise suggest a system that requests the callee to terminate the call. Brown, et al. discuss the analysis of speech and acknowledgement of the call eventually being terminated. However, the reference never suggests that the audible message, played by the system, specifically request the callee to terminate the call.

Similarly, the Examiner states that Brown, et al. disclose a system that classifies a telephone number as having been live-answered if the call was terminated in response to the audible message or classify a telephone number as not live-answered if the call was not terminated in response to the audible message. Specifically, the Examiner cites paragraphs 0021, 0026, 0028, 0033 and Table 2 of the Brown, et al. reference. However, none of these cited portions of the reference specifically teach classifying a number as being live-answered if the call is terminated in response to the system's message requesting the callee to terminate the call. Nor do the cited portions teach classifying the call as being not live-answered if the call is not terminated in response to the system's message. To be sure, Table 2 specifically only recites grammar recognition examples used by the Brown, et al. system to recognize particular speech patterns commonly left on answering systems.

The differences between the Brown, et al. system and the applicants' system, as claimed in claim 1, are significant. Accordingly, claim 1 is believed to be allowable over the prior art. The remaining claims each ultimately depend from claim 1 and are believed to be allowable for at least the reasons set forth herein with respect to claim 1. Applicants respectfully request the Examiner to reconsider the aforementioned rejections and allow claims 1, 2, 3, 8, 9, 19, 20, 25 and 26.

The Examiner rejected claims 10-12, 15, 23, 24, 27 and 28 under 35 U.S.C. § 103(a) as being unpatentable over the Brown, et al. reference, as applied to claim 2, in further view of U.S. Patent No. 6,850,602 to Chou. Similarly, the Examiner rejected claims 13, 14, 16, 17 and 18 under 35 U.S.C. § 103(a) as being unpatentable over the Brown, et al. and Chou references, as applied to claim 11, in further view of U.S. Patent No. 6,195,417 to Dans. Applicants respectfully disagree.

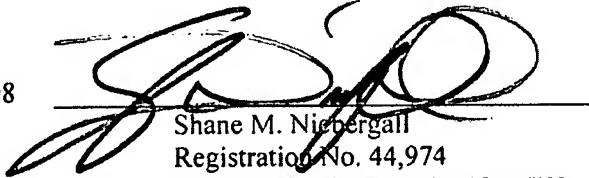
As discussed hereinabove, Brown, et al. fail to teach or otherwise disclose each and every limitation of claim 1, from which the rejected claims depend. Accordingly the combination of the cited references cannot render the subject claims obvious. Such an obviousness-type rejection fails to consider the claimed invention or the prior art as a whole. In determining the difference between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. Stratoflex, Inc. v. Aeroquip Corp., 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983). A prior art reference and the claimed invention must be considered in their entireties. Distilling an invention down to the "gist" or "thrust" of an invention disregards the

requirement of analyzing the subject matter "as a whole." W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *Cert. denied*, 469 U.S. 851 (1984). A system that uses software to prompt a callee to terminate the call, detect whether or not the callee so terminated the call, and then classify the telephone number as being live-answered or not live-answered based on that detection is clearly unique to the art. No suggestion or motivation can be found within the art for such a system. Such a simplified system of classification is far less complex, expensive or prone to error than the prior art classification systems. Accordingly, claims 10-12, 15, 23, 24, 27 and 28 should be allowed.

If an extension of time under 35 C.F.R. § 1.136 is required to obtain entry of this Amendment, such an extension is requested. If there are fees due under 37 U.S.C. §§ 1.16 or 1.17 which are not otherwise accounted for, please charge our Deposit Account No. 08-2623.

Respectfully submitted,

Date: January 14, 2008

A handwritten signature in black ink, appearing to read "Shane M. Niebergall", is written over a horizontal line.

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